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November 19, 2004

OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case:	Personnel Security Hearing
Date of Filing:	April 14, 2004
Case Number:	TSO-0098

This Decision concerns the eligibility of XXXXXXXX XXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A Department of Energy Operations Office (DOE Operations Office) informed the individual that it was in possession of reliable information that created a substantial doubt regarding the individual's eligibility for access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be granted. As set forth below, it is my decision that the individual's security clearance should not be granted.

I. Background

The individual has been employed by a contractor at a DOE facility since May 2002. After his hiring, the contractor requested access authorization for the individual. The DOE received derogatory information regarding the individual's eligibility to hold access authorization, and in December 2002, the individual participated in a personnel security interview (PSI). The security concerns raised by that information were not resolved by the PSI and in February 2003, the individual was diagnosed by a DOE consultant-psychiatrist as suffering from alcohol abuse.

In January 2004, DOE informed the individual how to proceed to resolve the security concerns that had created a doubt regarding his eligibility for access authorization. Notification Letter (January 14, 2004). The Notification Letter stated that the derogatory information regarding the individual falls within 10 C.F.R. § 710.8 (j) and (l) (Criteria J and L). The DOE Operations Office invoked Criterion J on the basis of information that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. In this regard, the Notification Letter states that a DOE consultant-psychiatrist diagnosed the individual as suffering from alcohol abuse without adequate evidence of rehabilitation or reformation. Criterion L is invoked when a person has allegedly engaged in any unusual conduct or is subject to any

circumstances which tend to show that the individual is not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. The DOE Operations Office invoked Criterion L based on the individual's history of six arrests between 1984 and 1992, five related to alcohol and one related to drugs.

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On April 14, 2004, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE consultant-psychiatrist (DOE psychiatrist) testified on behalf of the agency. The individual testified on his own behalf and also elected to call his mother, his supervisor, two colleagues and a friend as witnesses. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." Documents that were submitted by the individual during this proceeding are also exhibits to the hearing transcript and shall be cited as "Indiv. Ex."

II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th. Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be granted because I cannot conclude that such approval would not endanger the common defense and security and would be

clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

The individual began drinking alcohol once a month at the age of 17. PSI at 65. Around the age of 18 or 19, he increased his drinking to approximately one six-pack per week and often drank daily. *Id.* at 20, 69-70; Ex. 5 (Report) at 2. In 1984, at the age of 18, the individual was arrested for Distribution of a Controlled Substance to a Minor. Notification Letter at 3. He also smoked marijuana occasionally. PSI at 98. Between 1986 and 1992 (the ages of 19 and 25) the individual was arrested four times for Driving While Intoxicated (DWI), and once for Possession of Alcohol as a Minor. Notification Letter at 3; PSI at 57. During that same time period, his mother and the court sent him to various mental health professionals for alcohol related issues. PSI at 85-90. At the age of 25, he voluntarily enrolled in an alcohol treatment program. *Id.* at 85-86. The individual married in 1994. Report at 6. His wife also had an alcohol problem, and they drank together frequently. PSI at 73, 81. According to the individual, he tried twice to stop drinking in order to help his wife. *Id.* at 74-75, 82. However, both times he resumed drinking because he did not think it would hurt anyone, or because he was at a social event. *Id.* at 83. The individual described his wife as a heavy drinker, and admitted that alcohol caused problems in his marriage, including financial problems. *Id.* at 73-76, 83.

In May 2002, the individual began working at the DOE facility. Ex. 6. His employer requested a security clearance and the individual filled out a Questionnaire for National Security Positions (QNSP) in July 2002. Ex. 6. During a PSI in December 2002, the individual stated that he had again stopped drinking, this time one week before the interview. PSI at 82. He told the interviewer that his wife was “consuming a lot of alcohol,” and threatened to leave her if she did not stay sober. *Id.* at 82-83. However, he and his wife resumed drinking in January 2003. Report at 11. He now considers himself a recovering alcoholic. PSI at 95.

In February 2003, the individual was evaluated by a DOE psychiatrist. Ex. 5. The individual tested negative for alcohol and drugs in his urine screen, but his blood test showed elevated liver enzymes. Report at 6. The psychiatrist described the individual’s current drinking pattern as up to six beers per day in the previous month. *Id.* at 5. The psychiatrist concluded that the individual suffers from alcohol abuse with no evidence of rehabilitation or reformation.

B. DOE’s Security Concern

The excessive use of alcohol raises a security concern because of its intoxicating effect. “Because the use of alcohol at the very least has the potential to impair a user’s judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases.” *Personnel Security Review*, OHA Case No. VSO-0417, 28 DOE ¶ 82,798 (2001), quoting *Personnel*

Security Review, OHA Case No. VSA-0281, 27 DOE ¶ 83,030 at 86,644 (2000). In this case, the alcohol had the effect of impairing the individual's judgment such that he operated a motor vehicle while intoxicated, violated the law, and was arrested. The alcohol intoxication caused the individual to exhibit unusual conduct that led to multiple alcohol-related arrests. Therefore, DOE's security concerns are valid and the agency has properly invoked Criteria J and L in this case.

C. Hearing Testimony

1. The DOE Psychiatrist

The DOE psychiatrist testified at the beginning of the hearing about his two hour evaluation of the individual that took place in February 2003. Tr. at 16-20. The psychiatrist stated that his initial reading of the file contained evidence of an alcohol use disorder, based on the individual's history of excessive drinking from his teens through his mid-twenties, and also a record of five alcohol related arrests and one arrest for Distribution of a Controlled Substance to a Minor. *Id.* The individual's drug screen was normal, but his blood tests reflected elevated liver enzymes. *Id.* at 22-23; 28. According to the doctor, this indicated that something was damaging the individual's liver. *Id.* at 24. During the interview, the individual indicated that he was drinking up to six beers a day. *Id.* at 28. After reviewing the file and interviewing the individual, the psychiatrist ruled out other causes of liver damage and identified alcohol as the most likely cause of the elevated liver enzymes. *Id.* at 27-28. The psychiatrist expressed concern about the individual's denial of the serious problems caused by alcohol and the need to abstain. *Id.* at 33. The individual maintained that he did not see the need to stop drinking or to seek formal treatment. *Id.* at 33-35, 40. He blamed his current problems on his poor relationship with his wife. *Id.* at 35. Because the individual continued to drink, the psychiatrist diagnosed the individual as suffering from alcohol abuse without rehabilitation or reformation. *Id.* at 36-40. The psychiatrist opined that the individual probably drank to excess, based on the levels of his liver enzymes. The psychiatrist concluded in his report the individual should maintain sobriety and attend alcohol treatment for one year. *Id.* at 41-42.

2. Other Witnesses

As evidence of rehabilitation and reformation, the individual presented the testimony of his mother and several other witnesses. Tr. at 45-84. During her testimony, the individual's mother described a troubled youth: she acknowledged that the individual had an alcohol problem in his teens, that he had moved six or seven times between the ages of 16 and 26, that he had been involved with the law, and that he had a spotty employment history. Tr. at 77. She said that he was estranged from her between the ages of 20 and 25. *Id.* at 78-79. However, in the past 12 years the individual has turned his life around with steady employment, a close relationship with his mother, and no alcohol related arrests. *Id.* at 79. She has not seen him drink to excess in 12 years. *Id.* at 79. According to the individual's mother, his attendance at AA has had a positive effect on his life because he is now open about his alcohol problem and has a support group to assist him. *Id.* at 83.

The individual's supervisor testified that the individual has a good work ethic and no attendance problems. Tr. at 46. He has visited the individual at home, and last saw him drink six months prior to the hearing. *Id.* at 49. The individual never informed his supervisor that he had an alcohol problem, and the supervisor was not aware of the individual's previous problems with alcohol. Tr. at 54-58. Another colleague testified that the individual is reliable, and that he has never seen the individual drink alcohol, even in the individual's home. *Id.* at 73-74. Finally, the father of a close friend of the individual testified. He had known the individual for 25 years, and stated that he last saw the individual intoxicated almost two years ago at the witness' home. *Id.* at 61. He has also seen the individual's wife intoxicated. *Id.* at 64. The witness stated that the individual stopped drinking a few years ago, but resumed and stopped again around December 2003. *Id.* at 64-65. He testified that the security clearance was "40 to 50 percent" of the reason that the individual stopped drinking, but he also believed that the individual was motivated by physical problems caused by the consumption of alcohol and his wife's excessive drinking. *Id.* at 65. He thought the individual had been arrested once for DWI, and was not aware of the individual's three other DWI arrests. *Id.* at 67. However, based on the last five to six years, he considers the individual to be a responsible drinker, and attributed the individual's drinking problems to the individual's spouse. *Id.* at 71. According to the witness, the individual attended AA to solve problems in his marriage. *Id.* at 72.

3. The Individual

The individual testified at the hearing that he has abstained from alcohol since January 2004, six months prior to the hearing. Tr. at 98, 118. He also testified that he attended ten AA meetings since March 2004, and displayed a three month "chip" to mark his sobriety. *Id.* at 99-100. He has attended three sessions with a marriage counselor, although the counselor does not address his alcohol problem. *Id.* at 103-104. He recounted the positive changes in his life in the past ten years: he has purchased a residence, he has been married for ten years, he has had only one speeding ticket, he has purchased two homes, and his work history has been stable. *Id.* at 119. He admitted that he had a problem with alcohol. *Id.* at 89, 94. The individual described his experience at AA as enlightening and explained that he enjoys the support that the meetings provide. *Id.* at 98. However, he has not secured a sponsor because he does not have the urge to drink alcohol. *Id.* at 109.

D. Evidence of Rehabilitation and Reformation

At the conclusion of the hearing, the DOE counsel asked the psychiatrist if he had heard additional evidence at the hearing that would change his opinion regarding the individual's reformation and rehabilitation. The DOE psychiatrist answered that he believes that the individual is "on track." Tr. at 108. The psychiatrist also explained that it is acceptable that the individual was motivated to stop drinking by the administrative review process. *Id.* at 109. Further, the credible testimony of the individual's mother has confirmed that he is on a positive path in the years since his last arrest in 1992. *Id.* Nonetheless, the psychiatrist described the individual's participation in AA as "only okay because it doesn't sound like he's engaged too much in the 12 steps." *Id.* at 110-111. The psychiatrist

maintained that the individual needs a more intensive introduction to treatment; for instance, he could attend 90 AA meetings in 90 days. *Id.* at 110. In addition, the individual has a history of relapse, and his troubled marriage to an alcoholic wife could present problems in maintaining sobriety. *Id.* at 112-113. Therefore, the psychiatrist concluded that the individual is not yet rehabilitated. *Id.* at 112.

In a Part 710 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. See *Personnel Security Review*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). In this case, the only expert testimony is that of the DOE psychiatrist, who persuasively testified that the individual has not presented adequate evidence of rehabilitation from alcohol abuse. Although there is credible evidence in the record that the individual has taken very positive steps towards conquering his problem with alcohol, the individual has not demonstrated the requisite degree of rehabilitation. The six month duration of the individual's alcohol treatment falls short of the one year period recommended by the DOE psychiatrist and I share his concern about the lack of intensity of the individual's participation in the program. Thus, I find that the individual has not mitigated the security concerns of Criterion J.

As regards Criterion L, four of the five arrests at issue occurred while the individual was under the influence of alcohol. Our cases require that an individual demonstrate rehabilitation or reformation from an alcohol problem in order to mitigate the concerns raised by alcohol-related arrests. See *Personnel Security Review*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). As discussed above, the individual has not presented adequate evidence of rehabilitation or reformation from alcohol abuse. Therefore, I further find that the individual has not mitigated the Criterion L security concerns.

II. Conclusion

As explained in this Decision, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (j) and (l) in suspending the individual's access authorization. The individual has not presented adequate mitigating factors that alleviate the legitimate security concerns of the DOE Operations Office. In view of these criteria and the record before me, I cannot find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be granted.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: November 19, 2004